IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 2 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANDKISHORE SAKARLAL (HUF)

Versus

COMMISSIONER OF GIFT TAX

Appearance:

1. GIFT TAX REFERENCE No. 2 of 1989
SERVED BY RPAD - (N) for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1
MR TANVISH U BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This is a composite reference at the instance of

the assessee as well as at the instance of the revenue. The relevant assessment year is 1972-73.

2. The assessee HUF made gifts amounting to Rs.1,99,880/= in favour of Sheela and Amrita, two minor daughters of the karta of the HUF for their education. The exemption was claimed in respect of these gifts under Section 5(1)(xii) of the Gift Tax Act. The Gift-tax Officer rejected the claim on the ground that the gift is made by the HUF having co-parceners and the donees are not the children of the HUF, but the children of a member/karta of the HUF. Secondly, the donees had property in their own names and that the educational expenses for the two daughters in the previous years were on an average Rs. 1000/-. The Commissioner (Appeals), however, allowed the appeal of the assessee on the ground that the Gift-tax Officer was wrong in holding that the karta of the HUF cannot make gift to his own children. The Commissioner further held that the gifts were reasonable in view of the fact that the parents were highly educated and that the Karta had no son, but only two daughters.

3. In the appeal filed by the revenue, there was difference of opinion between the Accountant Member and the Judicial Member. The Accountant Member was of the view that the gift of Rs. 1,00,000/- in favour of Sheela was fully qualified for exemption as the amount was reasonable, since Sheela had wealth amounting to only Rs.3.26 lacs and Sheela, at that time holding the degree of B.Sc., was having future plans to obtain a post-graduate degree in Nuclear Physics from the USA. The Accountant Member further held, as far as the gift made to Amrita was concerned, that since she had wealth amounting to Rs.5.24 lacs, only three-fifth of the value of the gift to Amrita should be treated as reasonable and consequently that part be treated as exempt under Section 5(1)(xii) of the Act.

4. The Judicial Member agreed with the Accountant Member's opinion that the entire gift made to Sheela was reasonable considering the wealth owned by her and her educational career and her future plan for going abroad. However, when it came to the reasonableness of the gift made to Amrita, the Judicial Member was of the view that the gift to Amrita was unreasonable and no part of it should be treated as exempt under Section 5(1)(xii) of the Act. On the other hand, the Accountant Member was of the opinion that in the facts of the case, the gift made to Amrita was reasonable to the extent of three-fifth of the gift made to her. In view of the said difference of

opinion regarding reasonableness or otherwise of the gift to Amrita, the matter was referred to the third Member who happened to be the Vice-President of the Tribunal at Ahmedabad.

5. The Vice-President agreeing with the Accountant Member observed that these days education is an expensive matter particularly in the case of those who go abroad for getting education. The father himself had a degree in Engineering from the USA and the mother also had a doctorate in Chemistry from Scotland. The third Member also noted that Amrita, after obtaining her M.A., had proceeded to USA in August, 1987 for graduation in South Asian Languages and Civilization at a University at Chicago in USA and that the education was to continue for six years. Hence, merely because Amrita had a wealth of Rs.5.26 lacs, it did not make the gift made by the karta of the HUF to his daughter entirely unreasonable, and the third Member agreed with the Accountant Member that gift to Amrita was reasonable to the extent of three-fifth.

6. In view of the above majority view, while the entire gift made to Sheela was required to be treated as exempt under Section 5(1)(xii) of the Act, in respect of the gift made to Amrita, it was to be treated as exempt only to the extent of three-fifth of the value of the gift made to Amrita.

7. On the aforesaid facts, the following question is referred for our opinion at the instance of the assessee:-

(1) Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was right in holding that while the gift to Sheela was wholly exempt the value of the gift to Amrita was exempt only to the extent of 3/5th of that value ?

and the following two questions are referred for our opinion at the instance of the revenue :-

(2) Whether the Appellate Tribunal was right in holding that the gift to Sheela was wholly exempt and the gift to Amrita was exempt to the extent of 3/5th of its value u/s. 5(1)(xii) ?

(3) Whether the Tribunal was right in holding that the gift to Amrita was exempt as

above on the basis of the third member's opinion which appreciated a new fact that Amrita had gone abroad for higher education ?

8. The question referred at the instance of the assessee and question No. (2) referred at the instance of the revenue are required to be considered together. In this context, our attention is invited to the decision of this Court in the case of Sanatkumar Jayantilal vs. Commissioner of Gift-tax, (1998) 229 ITR 766. In the said decision, it is held that when the Hindu undivided family as a legal person gifts any property to such children who are its members, such gifts would be eligible to exemption under clause (xii) of Section 5(1) of the Gift-tax Act.

In view of this decision, the submission made on behalf of the revenue that the gifts made in favour of the daughters of the HUF were not eligible under Section 5(1)(xii) cannot be accepted.

9. Coming to the reasonableness of the amounts involved, we are of view that the Tribunal has considered all the relevant facts and circumstances of the case including the wealth owned by the daughters and also the higher education obtained by them till the date of the assessment and also the fact that both the daughters were pursuing their studies abroad and also the fact that the father himself had studied in the USA and the mother had also studied in Scotland.

In the aforesaid facts and circumstances, the reasonableness of the amounts confirmed by the Tribunal cannot be said to be perverse.

10. As far as question No. (3) is concerned, that is the second question referred at the instance of the revenue is concerned, we are of the view that since Amrita had proceeded to the USA for higher studies in August, 1987, and the question of reasonableness of the gift to Amrita for educational purposes was the major issue involved in the appeal, the Tribunal did not commit any error in taking the said fact into consideration.

11. In view of the above discussion, our answer to all the three questions referred for our opinion is in the affirmative. In other words, our answer to the questions referred at the instance of the revenue i.e. question Nos. (2) and (3) is in favour of the assessee and against the revenue.

12. Our answer to the sole question referred at the instance of the assessee is in favour of the revenue and against the assessee so far as the gift made to Amrita is concerned. As far as the gift made to Sheela is concerned, the Tribunal has unanimously held the entire amount of gift to be reasonable and we find no fault with the said decision.

13. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-